



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

| SERIAL NUMBER | FILING DATE | FIRST NAMED APPLICANT | ATTORNEY DOCKET NO. |
|---------------|-------------|-----------------------|---------------------|
| 07/762,762 | 09/16/91 | THOMPSON | G CGNE-69-4 |

CALGENE, INC.
1920 FIFTH ST.
DAVIS, CA 95616

18M2/0407

| MONDAY EXAMINER | |
|-----------------|--------------|
| ART UNIT | PAPER NUMBER |
| 1804 | 24 |

DATE MAILED:

04/07/94

Below is a communication from the EXAMINER in charge of this application

COMMISSIONER OF PATENTS AND TRADEMARKS

ADVISORY ACTION

THE PERIOD FOR RESPONSE:

- a) is extended to run 6 months or continues to run _____ from the date of the final rejection
b) expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

Appellant's Brief is due in accordance with 37 CFR 1.192(a).

Applicant's response to the final rejection, filed 25 March 1994 has been considered with the following effect, but it is not deemed to place the application in condition for allowance:

1. The proposed amendments to the claim and/or specification will not be entered and the final rejection stands because:
 - a. There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
 - b. They raise new issues that would require further consideration and/or search. (See Note).
 - c. They raise the issue of new matter. (See Note).
 - d. They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
 - e. They present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: _____

2. Newly proposed or amended claims _____ would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.

3. Upon the filing an appeal, the proposed amendment will be entered will not be entered and the status of the claims will be as follows:

Claims allowed: _____

Claims objected to: _____

Claims rejected: 18, 21, 26, 33, 35-70, 41, 68-71, 73-78, 80-82

However:

Applicant's response has overcome the following rejection(s): under 35 USC 112, 2nd of claims 18, 21-22, 26, 33, 35-36, 41, 68-82 for duplication in view of cancelled claims & of claims 74, 79, 81 in view of cancelled & amended claims

4. The affidavit, exhibit or request for reconsideration has been considered but does not overcome the rejection because one of ordinary skill in the art would have used the gel slice to obtain the protein sequence as a matter of routine and purity of the gel slice is not disputed. Deposit info is not in spec as req. by 37 CFR 1.809(d) & attorney's statement about removal of restriction refers to 40 chain, D45, and not the deposited plasmid.
5. The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented. 37 CFR 1.809(d) & attorney's statement about removal of restriction refers to 40 chain, D45,

The proposed drawing correction has has not been approved by the examiner.

Other IDS submitted A/F requires cert., perhaps fee to comply w/ 37 CFR 1.97(d); however upon review of 07-74461 & 07-65784 there appears to be double patenting over presently amended claims.

New matter objection is overcome by the amendment.

P. Moody
PATRICIA R. MOODY
PRIMARY EXAMINER
GROUP 1800